

**Ch. 245. An Act to Amend Certain Laws Administered by the Department of Environmental Protection**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 12 MRSA §9325, sub-§1, ¶E,** as amended by PL 2001, c. 626, §6, is further amended to read:

E. Out-of-door burning of wood wastes as defined in section 9324, subsection 7-A and painted and unpainted wood from construction and demolition debris in the open or in an incinerator with a primary chamber volume no greater than 133 cubic feet or 1,000 gallons that is not licensed by the Department of Environmental Protection;

**Sec. 2. 38 MRSA §341-G, first ¶,** as amended by PL 1997, c. 364, §18, is further amended to read:

There is established the Board of Environmental Protection Fund to be used by the board as a nonlapsing fund to carry out its duties under this Title. Notwithstanding any other provision of law, the funds identified in subsection 1 ~~shall~~ transfer annually to the Board of Environmental Protection Fund in an amount not to exceed ~~\$250,000~~ \$325,000. Money in the Board of Environmental Protection Fund may only be expended in accordance with allocations approved by the Legislature.

**Sec. 3. 38 MRSA §342, sub-§7,** as amended by PL 1999, c. 127, Pt. A, §53, is further amended to read:

**7. Representation in court.** The commissioner may authorize licensed Maine attorneys with active bar status who are employees of the department and certified employees of the department to serve civil process and represent the department in District Court in the prosecution of violations of those laws enforced by the department and set forth in Title 4, section 152, subsection 6-A. Licensed Maine attorneys do not need to file the certification referred to in the Maine Rules of Civil Procedure, Rule 80K(h). Certification of ~~these~~ nonattorney employees must be provided as under Title 30-A, section 4453.

**Sec. 4. 38 MRSA §342, sub-§14,** as enacted by PL 1991, c. 804, Pt. A, §2, is repealed.

**Sec. 5. 38 MRSA §347-A, sub-§1, ¶A,** as repealed and replaced by PL 1993, c. 204, §1, is amended to read:

A. Whenever it appears to the commissioner, after investigation, that there is or has been a violation of this Title, of rules adopted under this Title or of the terms or conditions of a license, permit or order issued by the board or the commissioner, the commissioner may initiate an enforcement action by taking one or more of the following steps:

- (1) Resolving the violation through an administrative consent agreement pursuant to subsection 4, signed by the violator and approved by the board and the Attorney General;

- (2) Referring the violation to the Attorney General for civil or criminal prosecution;
- (3) Scheduling and holding an enforcement hearing on the alleged violation pursuant to subsection 2; or
- (4) With the prior approval of the Attorney General, ~~initiating~~ commencing a civil action pursuant to section 342, subsection 7 and the Maine Rules of Civil Procedure, Rule 3.

**Sec. 6. 38 MRSA §349, sub-§9**, as repealed and replaced by PL 1997, c. 794, Pt. A, §9, is amended to read:

**9. Unavoidable malfunctions.** The following considerations apply to violations resulting from unavoidable malfunctions.

A. The commissioner may exempt from civil penalty an air emission in excess of license limitations if the emission occurs during start-up or shutdown or results exclusively from an unavoidable malfunction entirely beyond the control of the licensee and the licensee has taken all reasonable steps to minimize or prevent any emission and takes corrective action as soon as possible. There may be no exemption if the malfunction is caused, entirely or in part, by poor maintenance, careless operation, poor design or any other reasonably preventable condition or preventable equipment breakdown. The burden of proof is on the licensee seeking the exemption under this subsection. In the event of an unavoidable malfunction, the licensee must notify the commissioner in writing within 48 hours and submit a written report, together with any exemption requests, to the department on a quarterly basis. ~~The commissioner shall annually report to the joint standing committee of the Legislature having jurisdiction over natural resource matters with regard to the exercise of this authority.~~

B. An affirmative defense is established for a wastewater discharge in excess of license limitations if the discharge results exclusively from unintentional and temporary noncompliance with technology-based limitations because of factors entirely beyond the reasonable control of the licensee and the licensee has taken all reasonable steps to minimize or prevent any discharge and takes corrective action as soon as possible. There is not an affirmative defense if the malfunction is caused, entirely or in part, by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance or careless or improper operation. The burden of proof is on the licensee seeking the affirmative defense under this subsection. In the event of an unavoidable malfunction, the licensee must notify the commissioner orally within 24 hours, and in writing within 5 days. ~~The commissioner shall annually report to the joint standing committee of the Legislature having jurisdiction over natural resource matters with regard to the exercise of this authority.~~

**Sec. 7. 38 MRSA §464, sub-§3, ¶B**, as enacted by PL 1985, c. 698, §15, is amended to read:

B. The board shall, from time to time, but at least once every ~~3~~ 4 years, hold public hearings for the purpose of reviewing the water quality classification system and related standards and, as appropriate, recommending changes in the standards to the Legislature.

**Sec. 8. 38 MRSA §480-Z, sub-§3**, as enacted by PL 1997, c. 101, §1 and affected by §2, is amended to read:

**3. Compensation fee program.** The department ~~shall~~ may develop a compensation fee program in consultation with the State Planning Office, the United States Army Corps of Engineers and state and federal resource agencies, including the United States Fish and Wildlife Service and the United States Environmental Protection Agency.

A. The program ~~must~~ may include, ~~at a minimum~~, the following:

- (1) Identification of wetland management priorities on a watershed basis;
- (2) Identification of the types of wetland losses eligible for compensation under this subsection;
- (3) Standards for compensation fee projects;
- (4) Calculation of compensation fees based on the functions and values of the affected wetlands and the cost of compensation, taking into account the potential higher cost of compensation when a project is implemented at a later date; and
- (5) Methods to evaluate the long-term effectiveness of compensation fee projects implemented under this subsection in meeting the wetland management priorities identified pursuant to subparagraph (1).

B. Any compensation fee ~~must~~ may be paid into a wetlands compensation fund established by the department as provided in subparagraph (1) or to an organization authorized by the department as provided in subparagraphs (1) and subparagraph (2). A compensation project funded in whole or in part from compensation fees must be approved by the department.

(1) The department may establish a wetlands compensation fund for the purpose of receiving compensation fees, grants and other related income. The wetlands compensation fund must be a fund dedicated to payment of costs and related expenses of wetland restoration, enhancement, preservation and creation projects. The department may make payments from the fund consistent with the purpose of the fund. Income received under this subsection must be deposited with the State Treasurer to the credit of the wetlands compensation fund and may be invested as provided by law. Interest on these investments must be credited to the wetlands compensation fund.

(2) The department may enter into an enforceable, written agreement with a public, quasi-public or municipal organization or a private, nonprofit organization dedicated to for the protection of wetlands and other natural areas for the purposes of receiving. Such an organization must demonstrate the ability to receive compensation fees, administering the ~~administer~~ administer a wetlands compensation fund and ensuring ensure that compensation projects are implemented consistent with ~~the~~ the local, regional or state

wetland management priorities ~~identified by the department~~ for the watershed in which the project is located. If compensation fees are provided to an authorized organization, the organization shall maintain records of expenditures and provide an annual summary report ~~to~~ as requested by the department. If the authorized agency is a state agency other than the department, the agency shall establish a fund meeting the requirements specified in subparagraph (1). If the organization does not perform in accordance with this subsection or with the requirements of the written agreement, the department may revoke the organization's authority to conduct activities in accordance with this subsection. ~~If an organization's authorization is revoked, any funds remaining in the wetlands compensation fund must be provided to the department.~~

Rules adopted pursuant to this subsection are routine technical rules under Title 5, chapter 375, subchapter ~~H-A~~ 2-A.

**Sec. 9. 38 MRSA §480-Z, sub-§§5 and 6**, as amended by PL 2001, c. 232, §17, are repealed.

**Sec. 10. 38 MRSA §568-A, sub-§7**, as enacted by PL 1997, c. 374, §5, is amended to read:

**7. Repeal date.** This section is repealed December 31, ~~2005~~ 2010.

**Sec. 11. 38 MRSA §568-B, sub-§3** is enacted to read:

**3. Repeal date.** This section is repealed December 31, 2010.

**Sec. 12. 38 MRSA §569-A, sub-§5, ¶A**, as amended by PL 1999, c. 505, Pt. A, §12, is further amended to read:

A. ~~Until December 31, 2005, a~~ A fee is assessed of 38¢ per barrel of gasoline; 19¢ per barrel of refined petroleum products and their by-products other than gasoline, liquid asphalt and #6 fuel oil, including #2 fuel oil, kerosene, jet fuel and diesel fuel; and 4¢ per barrel of #6 fuel oil. The fee is assessed on the first transfer of those products by oil terminal facility licensees, as defined in section 542, subsection 7, and on a person required to register with the commissioner under section 545-B who first transports oil into the State. The fee is not assessed on petroleum products that are exported from this State. These fees must be paid monthly on the basis of records certified to the commissioner. This subsection does not apply to waste oil transported into the State in any motor vehicle that has a valid license issued by the department for the transportation of waste oil pursuant to section 1319-O and is subject to fees established under section 1319-I.

**Sec. 13. 38 MRSA §569-A, sub-§13**, as amended by PL 1997, c. 374, §7, is further amended to read:

**13. Repeal date.** This section is repealed December 31, ~~2005~~ 2010.

**Sec. 14. 38 MRSA §569-B, sub-§8**, as amended by PL 1997, c. 374, §9, is further amended to read:

**8. Effective date.** This section takes effect December 31, ~~2005~~ 2010.

**Sec. 15. 38 MRSA §570-A, 2nd ¶**, as amended by PL 1997, c. 374, §10, is further amended to read:

This section is repealed December 31, ~~2005~~ 2010.

**Sec. 16. 38 MRSA §570-B, 2nd ¶**, as amended by PL 1997, c. 374, §11, is further amended to read:

This section is repealed December 31, ~~2005~~ 2010.

**Sec. 17. 38 MRSA §570-I, 2nd ¶**, as amended by PL 1997, c. 374, §12, is further amended to read:

This section takes effect December 31, ~~2005~~ 2010.

**Sec. 18. 38 MRSA §570-J, 2nd ¶**, as amended by PL 1997, c. 374, §13, is further amended to read:

This section is effective December 31, ~~2005~~ 2010.

**Sec. 19. 38 MRSA §570-K, sub-§5**, as enacted by PL 2001, c. 605, §3, is amended to read:

**5. Spill prevention and control.** An aboveground oil storage facility used in the marketing and distribution of oil to others must be operated in compliance with the federal requirements for the preparation and implementation of spill prevention control and countermeasure plans under 40 Code of Federal Regulations, 112 ~~(2001)~~ in effect on August 17, 2003. Failure to comply with those federal requirements in accordance with the deadlines set by the United States Environmental Protection Agency constitutes a violation of this Title. If the department believes that a facility's plan does not satisfy those federal requirements, the department shall request an opinion from the United States Environmental Protection Agency as to the legal adequacy of the plan and any amendment necessary to bring the facility into compliance with those federal requirements. The department shall prepare educational and technical materials for use by facilities affected by this subsection. This subsection is repealed October 1, 2005.

**Sec. 20. PL 1991, c. 817, §28**, as amended by PL 1997, c. 374, §15, is further amended to read:

**Sec. 28. Effective date.** That section of this Act that amends the Maine Revised Statutes, Title 38, section 570, first paragraph, as repealed and replaced by Public Law 1987, chapter 735, section 72, takes effect December 31, ~~2005~~ 2010.

**Sec. 21. PL 1991, c. 817, §30**, as amended by PL 1997, c. 374, §16, is further amended to read:

**Sec. 30. Effective date.** That section of this Act that amends the Maine Revised Statutes, Title 38, section 570, first paragraph, as amended by Public Law 1989, chapter 865, section 17 and affected by sections 24 and 25, is repealed December 31, ~~2005~~ 2010.